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ALEXA INTERNET, INC. and NIALL
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

GIRAFA.COM, INC.,

Plaintiff,

v.

ALEXA INTERNET, INC.; NIALL
O'DRISCOLL,

Defendants.

CASE NO. CV 08-02745 RMW

**[PROPOSED] ORDER GRANTING
DEFENDANTS' MOTION TO DISMISS
PLAINTIFF'S THIRD CLAIM FOR
RELIEF UNDER FED. R. CIV. P. 12(b)(6)**

Date: September 5, 2008
Time: 9:00 a.m.
Dept.: 6, 4th Floor
Judge: Honorable Ronald M. Whyte

Defendants Alexa Internet, Inc. and Niall O'Driscoll's ("Defendants") Motion to Dismiss Plaintiff's Third Claim for Relief Under Fed. R. Civ. P. 12(b)(6) having been fully considered along with Plaintiff Girafa.com, Inc.'s ("Plaintiff") briefing and the evidence before the Court;

THE COURT HEREBY FINDS THAT:

- 1) Plaintiff brought its Third Claim for Relief as a collateral attack on Alexa Internet, Inc.'s patent infringement lawsuit that is pending in the Eastern District of Texas;
- 2) Plaintiff is unable to show that:
 - (i.) Alexa violated any law or statute;
 - (ii.) Alexa's conduct threatens to harm competition; or
 - (iii.) Alexa engaged in misleading conduct or that Girafa acted in reliance on such misleading conduct; and
- 3) Plaintiff's Third Claim for Relief cannot, as a matter of law, state a claim for which relief can be granted.

IT IS HEREBY ORDERED THAT Defendants' Motion to Dismiss is GRANTED without leave to amend.

IT IS SO ORDERED.

Dated: September _____, 2008

RONALD M. WHYTE
United States District Judge